

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

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S.E. by his legal guardian J.I.,	:	
J.H. by his legal guardian C.D.,	:	
on behalf of a class	:	
of those similarly situated	:	
	:	
Plaintiff,	:	Filed via ECF System
v.	:	Civil Action No. 1:12-cv-
	:	00429-RGA
	:	(Judge Andrews)
Delaware Department of Education	:	
	:	Class Action
	:	
Respondent.	:	

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**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

**YOU ARE NOT BEING SUED**

YOUR RIGHTS MIGHT BE AFFECTED BY THE PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT IN FEDERAL COURT IF YOU WERE ELIGIBLE TO RECEIVE SPECIAL EDUCATION AND RELATED SERVICES DURING THE 2019-2020 OR 2020-2021 SCHOOL YEARS, WERE NOT PARENTALLY PLACED IN A PRIVATE SCHOOL OR HOME SCHOOL, AND EXITED SERVICES AT THE END OF THE 2019-2020 OR 2020-2021 SCHOOL YEARS BECAUSE OF YOUR AGE AND WITHOUT A REGULAR HIGH SCHOOL DIPLOMA.

This notice is to inform you of the proposed settlement of a lawsuit and a hearing to be held by the Court to determine whether the settlement should be approved.

- In 2022, two students with disabilities filed a class action lawsuit against the Delaware Department of Education (“DDOE”) claiming

that DDOE was violating federal law by terminating the students' eligibility for special education and related services before they turned 22 years old.

- After the lawsuit was initiated, Delaware law was changed so that students who qualify for special education services, but who do not receive a regular high school diploma, may continue to be eligible to receive services until the end of the school year in which the student turns 22 years old.
- The parties negotiated a Settlement Agreement on behalf of a class of children who exited special education services without a high school diploma in the school years 2019-2020 and 2020-2021 because of their age (they turned 21 years old during the 2019-2020 or the 2020-2021 school years).
- The DDOE has agreed to make available a compensatory education fund for class members to use for private educational services. The fund will compensate class members 3.5 hours per day for each day of public education of which the student was deprived and is valued at \$75 per hour. DDOE denies that it was, or is, violating federal law. The Court has not decided who is right or wrong.

The Court must decide whether to approve the Settlement Agreement after a public hearing that you may attend. At the hearing, the Court will decide if the proposed Settlement Agreement is fair, adequate, and reasonable. Below is important information about the Fairness Hearing and a summary of the Settlement Agreement.

THE SETTLEMENT FAIRNESS HEARING: To decide whether the proposed Settlement Agreement is fair, adequate, and reasonable, the Court will hold a hearing at 10:00AM on March 14, 2024 at:

J. Caleb Boggs Federal Building & U.S. Courthouse  
844 N. King Street  
Courtroom 6A  
Wilmington, DE 19801-3555

If you want to testify or go to the hearing, you must send a letter or email NO LATER THAN February 15, 2024 to:

Lawrence Lee Wentz, Esquire  
521 N. West Street  
Wilmington, DE 19801

Email: lee.wentz@lwentzlaw.com

You can also write a letter or email with your opinion about the Settlement Agreement if you do not want to testify or go to the hearing. Send the letter or email NO LATER THAN February 15, 2024 to Lawrence Lee Wentz, Esq. at the address above, and he will give it to the Court.

### **Summary of the Proposed Settlement Agreement**

The Settlement Agreement provides compensatory education services for students who did not receive a high school diploma but were aged out of special education and related services before their 22<sup>nd</sup> birthday. The settlement, however, excludes certain students who were eligible to receive an additional year of services pursuant to a Delaware law that made available an extra year of services for students during the 2020-2021 school year because of the Covid-19 pandemic (the “Covid Law”).

Specifically, those eligible to receive compensatory education are:

- a. All students eligible to receive special education and related services pursuant to the IDEA:
  - (a) who were not parentally placed in a private school or home school; and
  - (b) who reached the age of 21 during the 2019-2020 school year; and
  - (c) exited services at the end of the 2019-2020 school year because of their age without a regular high school diploma.

and

- b. All students eligible to receive special education and related services pursuant to the IDEA:
  - (a) who were not parentally placed in a private school or home school; and

- (b) who reached the age of 21 during the 2020-2021 school year; and
- (c) who exited services at the end of the 2020-2021 school year because of their age, without a regular high school diploma, but excluding such students who:
  - (i) did not receive services pursuant to the Covid Law because the students' IEP teams determined that they did not require an additional year of services, or the student refused additional services, or was unresponsive to the offer of additional services; or
  - (ii) participated in Project SEARCH.

DDOE will provide compensatory education to class representative S.E. using the same formula applicable to other class members, and S.E. will receive an additional \$1,500 in compensatory education as a named plaintiff.

All compensatory education provided will be held in a fund retained by the DDOE and class members will submit forms for payment or reimbursement for services. No cash will be given to any class members. The compensatory education must be used for legitimate education expenses within four (4) years of the effective date of the Settlement Agreement.

Legitimate education expenses may include the following: (i) primary, secondary or special education instruction; (ii) educational programs, services, equipment, technology, technological hardware, software including no more than one computer, laptop, iPad or similar device; (iii) related services, as defined in IDEA; (iv) secondary and post-secondary vocational training or education provided by a licensed school or program; (v) planned courses of instruction offered through internet providers; (vi) educational evaluations conducted by certified or licensed (non-familial) professionals; (vii) behavioral therapy and social skills training; (viii) any classes, credits, or other services required for the obtainment of a regular high school diploma; (ix) reimbursement for reasonable transportation costs for services compensated by the settlement agreement.

The compensatory education cannot be used as payment for anything related to postsecondary/college education (outside of remedial, non-credit carrying, educational supports); related to personal enrichment, leisure, or recreational activities (except for related services as defined by the IDEA); of an exclusively religious and non-special education nature; or which the DDOE itself would be prohibited from purchasing or providing by law.

### **1. Why Did I Receive This Settlement Notice**

This Settlement Notice is sent to you because Department of Education records indicate that you or your child are a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its approval on Settlement.

### **2. Why is there a Settlement?**

The Court has not reached a final decision as to the merits of the Class Representative's claims. Instead, the Class Representative and the Department of Education have agreed to the Settlement. The Settlement is the product of extensive negotiations between the Class Representative, the Department of Education and their respective counsel. The Class Representative and Class Counsel believe that the Settlement is best for all Class Members. Nothing in the Settlement Agreement is an admission or concession on the Department of Education's part of any fault or liability. The Settlement has been entered into to avoid the uncertainty, expense, delays and burden of litigation.

### **3. What does the Settlement Provide?**

Under the Settlement, the Department of Education has agreed to make a compensatory education fund available to each Class member to use on legitimate educational expenses. The amount available to each class

member will be determined according to the formula explained in numbered paragraph 5 below. Class members may access the fund for a period of four years from the date on which the Court approves the Settlement. Class members must request their compensatory education from the Finance Director of the Department of Education in a form created by the Department of Education.

All Class members will fully release the Department of Education from any claims for systemic injunctive relief or compensatory education under the Individuals with Disabilities in Education Act, Section 504 of the Rehabilitation Act and related Delaware state law and regulations regarding age eligibility for special education and related services in Delaware at issue in the lawsuit which arose before June 7, 2023.

#### **4. How Much Compensatory Education Funding Will I Be Able to Access?**

The amount of compensatory education fund available to the Class member will be calculated at a rate of \$75 per hour for 3 and ½ hours per school day for each school day between the date the Class member exited special education services, after the end of the school year in which the Class member turned 21 years old, and the date on which the class member turned 22 years old, rounded up to the nearest month. School days are determined by the calendar of the Class member's District of Residence and include Extended School Year or a 12-month school year if the Class member qualified for either in his or her Individualized Education Program.

#### **5. How Can I Access My Compensatory Education Fund?**

Class Members may request funds from their compensatory education fund for legitimate educational expenses only. Requests must be made on a form created by the Department of Education and emailed to [DOECompensatory.FundRequest@doe.k12.de.us](mailto:DOECompensatory.FundRequest@doe.k12.de.us). The form is located on the Department of Education website (<https://education.delaware.gov/>) or in

paper form from Lawrence Lee Wentz, Esq. Forms must be emailed to the Director of Finance at [DOECompensatory.FundRequest@doe.k12.de.us](mailto:DOECompensatory.FundRequest@doe.k12.de.us).

#### **6. When Can I Access My Compensatory Education Fund?**

The timing is conditioned on the Court's approval of the Settlement and may take a while. Once approved, Class members will be able to access their compensatory education funds for four years from the date the Court approves the settlement. If funds are not accessed within the four-year time frame, they will expire and will no longer be available.

#### **7. Can I Get Out of the Settlement?**

**Yes. A form for opting out of this class action settlement is enclosed with this Notice. If you do NOT want to participate in the settlement, you must complete and return the enclosed form before March 1, 2024. The Class Members who do not opt out of this class action settlement will receive access to a compensatory education fund but lose any legal claims** for systemic injunctive relief or compensatory education under the IDEA, Section 504 of the Rehabilitation Act, and related Delaware state law and regulations regarding age eligibility for special education and related services in Delaware at issue in the Lawsuit which arose on or before the Effective Date of the Settlement Agreement.

#### **8. Do I Have A Lawyer in The Case?**

The Court has appointed Lawrence Lee Wentz, Esq. in Wilmington, Delaware as Settlement Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

## 9. How Will The Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, and Class Representative Compensation at least 28 days prior to the Fairness Hearing. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than \$100,000. All papers filed in this Action, including Class Counsel's motion for Attorneys' Fees and Costs, and Class Representative Compensation, will be available for review via PACER at <http://www.pacer.gov>.

## 10. How Do I Tell The Court If I Don't Like the Settlement?

If you are a Class Member, you can object to the Settlement or the request by Class Counsel for attorneys' fees and costs or the request for Class Representative Compensation by filing a written objection, and any papers submitted in support thereof, with the Clerk of the Court and sending copies to Class Counsel and to the Department of Education's Counsel at the addresses below. Your written objection must be filed with the Clerk of the Court at the United States District Court for the District of Delaware, 844 North King St., Room 4209, Wilmington, DE 19801, no later than February 15, 2024 to be considered.

CLASS COUNSEL	DEPARTMENT OF EDUCATION COUNSEL
Lawrence Lee Wentz, Esq. 521 N. West Street Wilmington, DE 19801  Email: <a href="mailto:lee.wentz@lwentzlaw.com">lee.wentz@lwentzlaw.com</a>	Carla A.K. Jarosz, Esq. Delaware Department of Justice 102 West Water Street, Dover, Delaware 19904  Email: <a href="mailto:Carla.jarosz@delaware.gov">Carla.jarosz@delaware.gov</a>

### **11. When and Where Will The Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing on March 14, 2024, at 10:00AM before the Honorable Richard G. Andrews at the J. Caleb Boggs Federal Building, 844 N. King Street, Wilmington, Delaware 19801. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, and Class Representative Compensation. If there are objections, the Court will consider them then.

### **12. Do I Have to Attend The Fairness Hearing? If I Attend, May I Speak?**

No, you do not have to attend, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time, the Court will consider it.

Yes, you may speak at the Fairness Hearing if you file and serve a notice of intent to appear by February 15, 2024, and you must comply with the requirements for making an objection (set forth

### **13. What Happens If I Do Nothing At All?**

above) if you wish to object.

If you do nothing and the Court approves the settlement you will receive information on how to access your compensatory education fund. You will not receive cash. You will be bound by and will agree to all terms of the Settlement, including the release of claims as described in the Settlement Agreement.

You must contact the Delaware Department of Education's Director of Finance on the approved form to use the fund for legitimate education expenses and the funds must be used within four years of the effective date of the Settlement Agreement.

**14. How Do I Get More Information?**

The full Settlement Agreement and other documents relating to this case can be found at <https://education.delaware.gov/> and at Lawrence Lee Wentz, Esq.'s website at <http://www.lwentzlaw.com> or can be requested in hard copy by calling (302)735-4000 or Lawrence Lee Wentz at (302) 319-3387.

**DO NOT WRITE OR TELEPHONE THE COURT.**

Dated \_\_\_\_\_, 2023

Clerk of Court